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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 655

MRS. EVELYN BUTTS,

Appellant,

vs.

ALBERTIS HARRISON, Governor, Capitol Square, Richmond, Virginia; MISS MARY DUDLEY, City Registrar, City Hall Annex, Norfolk, Virginia; ALEX H. BELL, City Treasurer, City Hall, Norfolk, Virginia; WILLIAM PRIEUR, Clerk, The Corporation Court, Norfolk, Virginia,

Appellees.

ON APPEAL FROM UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA AT ALEXANDRIA

BRIEF FOR APPELLANT

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Appellees.

ON APPEAL FROM UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA AT ALEXANDRIA

BRIEF FOR APPELLANT

Opinion Below

The opinion of the statutory three-Judge District Court impaneled in the Eastern District of Virginia dismissing appellant's complaint after a trial on the merits (R. 147-149) is reported at 240 F. Supp. 270 (1964).

Jurisdiction

Jurisdiction of this direct appeal is conferred on the United States Supreme Court by Title 28, United States Code, Sections 1253 and 2101 (b). The opinion of the District Court in this action (R. 147-149) was dated November 10, 1964, and the final order dismissing the Complaint herein (R. 150) was entered November 10, 1964, after a trial on the merits. A Notice of Appeal was filed in that Court on January 2, 1965 (R. 151-152). After Appellant's jurisdictional statement was filed on February 24, 1965, an order noting probable jurisdiction by this Court was entered October 11, 1965 (86 S. Ct. 94) (R. 156).

Constitutional, Statutory and City Charter Provisions Involved

This appeal involves the First Amendment, Section I of the Fourteenth Amendment, and the Fifteenth Amendment to the United States Constitution; Sections 18, 20, 21, 22, 38, and 173 of the Virginia Constitution; Sections 24-17, 24-22, 24-67, 24-120, 24-129, 24-129.1 and 58-49 of the Virginia Statutes (1950 Code as amended); and Sections 30, 35 and 43 of the Norfolk City Charter. These provisions are reprinted in the Appendix, *infra*.

Questions Presented

I. Do the constitutional and statutory provisions of Virginia which make payment of the poll tax a prerequisite to voting in state and local elections violate the rights of the poorer citizens of Virginia to equal protection and due process of law under the Fourteenth Amendment?

II. Do the constitutional and statutory provisions of Virginia which make payment of the poll tax a prerequisite to voting in state and local elections, because of their special economic impingement upon Negroes, violate the rights of the poorer Negro citizens of Virginia to equal protection and due process of law under the Fourteenth Amendment?

III. Do the constitutional and statutory provisions of Virginia which make payment of the poll tax a prerequisite to voting in state and local elections abridge the right to vote of the Negro citizens of Virginia on account of race, color or previous condition of servitude in violation of the Fifteenth Amendment to the Federal Constitution?

IV. Do the constitutional and statutory provisions of Virginia which make payment of the poll tax a prerequisite to voting in state and local elections violate the rights of the poorer citizens of Virginia guaranteed by the First Amendment to the Federal Constitution?

Statement

This action was brought by the Appellant Mrs. Evelyn Butts, on behalf of herself and others similarly situated, for the purpose of having the constitutional and statutory provisions of Virginia which impose a poll tax as a prerequisite to voting declared in violation of the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States and to have their enforcement permanently enjoined (R. 1-8).

Appellant is an adult Negro resident of Norfolk, Virginia, who was and is qualified to vote but for her financial inability to pay her poll tax. She is one of many such citizens,

both white and non-white, of very poor means, who are discouraged or prevented from voting by the poll tax and its procedural requirements and upon whom payment of the tax creates an economic hardship. Appellant because of her poverty was granted permission by the District Court to bring her suit and to prosecute this appeal *in forma pauperis* (R. 9). Similar permission was granted by this Court (R. 155).

Defendants and Appellees in this proceeding are the Governor of the Commonwealth of Virginia, the City Registrar of the City of Norfolk, the City Treasurer of Norfolk, and the Clerk of the Corporation Court of Norfolk being the officers of Virginia and of Norfolk who, under the Virginia Constitution and statutes, are charged with the responsibility of enforcing the election laws preventing persons who have not paid their poll tax from registering to vote in state and local elections (R. 1-2).

The amount of the levy in question is one dollar and fifty cents per year, and a citizen desiring to vote must have paid all of his poll tax for three years next preceding the year in which an election is held. In addition, the tax must be paid at least six months prior to the election date (R. 3-7).

This case was tried on its merits on October 21, 1964. It was stipulated at trial that Appellant's testimony received into evidence was this (R. 48-50):

Mrs. Butts: She is the plaintiff-appellant and has been eligible to participate in all local, state and federal elections held in the State of Virginia (up to the year 1964). She has voted in the past and paid the poll tax in the past. The poll tax created an economic hardship for her and had been a

hardship for many years, and solely because of this hardship, although she wants to vote, she has not paid her current poll tax. Her sole support is her disabled husband, whose sole income is his veteran's pension. She has no income of her own. She and her husband support in their home a fifteen year old daughter and the ninety year old father of Mrs. Butts (R. 47-48).

Mr. John Brooks, of Richmond, Virginia: He is a salaried employee of the National Association for the Advancement of Colored People, and has been engaged solely in voter registration and get-out-the-vote campaigns. He has supervised the organization of these campaigns and has himself personally attempted to get people to pay their poll tax and vote, and the widespread reason given him by persons who do not register and vote is that they cannot pay their poll tax; and from his observation of the homes, clothing and personal property of such persons he says they are poverty-stricken (R. 48).

Professor Frederic B. Ogden: He is the head of the Political Science Department of Eastern Kentucky University. He has made an extensive study of the poll tax in Texas, Mississippi, Arkansas, Virginia and Alabama, and has written a book, published by the University of Alabama Press, in which he addressed himself to the impact on elections of the poll tax. He studied the census figures of the State of Virginia, which are made an Exhibit (R. 51, 53-110). Based upon his studies and knowledge as a political scientist, from his personal investigation and from the writings of others, and being aware of the economic conditions, the economic groupings, and the economic status of poor white people and poor Negro people, he states that the poll tax is an impediment to voting and does deter and inhibit vot-

ing; and that since there are, proportionately, twice as many poverty-stricken people among the Negro group as among the white group, the economic impact and impingement upon the Negro people is greater because of their economic status (R. 48, 50).

All of the Exhibits on the Exhibit List were received in evidence (R. 32, 51).

Oral Argument was heard by the statutory three-Judge Federal Court on October 21, 1964, and on November 10, 1964, the Court rendered its decision and its final order saying, "Upon consideration of the pleadings, the exhibits, the stipulations and other parts of the record" the complaint is dismissed (R. 147-150). This order is treated by Appellant as a judgment for Appellees on the merits after trial. This order of the statutory three-Judge Court, upholding the Constitutionality of the provisions of state laws in question and refusing to enjoin their enforcement and execution, constitutes the subject of this appeal.

SUMMARY OF ARGUMENT

I.

The exercise of all powers relegated to the States under our federal system is subject to limitations contained in the United States Constitution; and the power to set qualifications for voting is so limited.

This Court has recently recognized in the apportionment cases that the exercise of the franchise is a crucial part of our democracy and is deserving of the highest protection. Because of existing economic realities the Virginia Poll Tax does affect the number of people who vote. Different eco-

nomic classes exist in Virginia and great numbers of that State's citizens are poverty-stricken by any standard. Further the testimony presented by the Appellant shows clearly that the poll tax prevents or discourages many of these people from voting.

Not only does the poll tax bear unequally on the poorer people of Virginia but also this discrimination is without any redeeming justification. The levy bears no rational relation to the ability to use the ballot. It cannot be justified as a revenue measure nor is it true that the people who pay it are only those who take sufficient interest in the affairs of the State to vote.

The poll tax, because of its discriminatory effect without any rational justification therefor, violates the equal protection clause of the Fourteenth Amendment.

Furthermore, the procedural provisions of the tax are so unreasonable as to themselves make it invalid. Provisions such as that which require payment six months in advance and which prohibit collection by legal process for three years, as well as the lack of any uniform assessment procedure, when taken together result in a denial of due process to the citizens of Virginia.

The question of economic discrimination, as here presented, has never been decided in the prior poll tax decisions, including *Breedlove* v *Suttles,* 302 U.S. 277, upon which the lower Court relied.

II.

While the poll tax denies equal protection of the law to all the poor, as discussed above, it does for past and present factual reasons have a very special impingement upon the Negro citizens of Virginia. They have remained economically disadvantaged since the time of their previous condition of servitude. The non-white families are, according to Federal Census figures, concentrated in the lowest income brackets, and the trend from 1950 to 1960 is to seriously increase the concentration.

The present economic condition of Negroes is due to their historic legal position in our society. They are still in a substantial way excluded from political life because they are poor, and they are poor because they have been excluded from political life.

The history of African Slavery, and of state denial of equality on a racial basis since its abolition, appears in the opinions of this Court. This history places the poll tax payment, as a prerequisite to voting (and its special objective: to keep Negroes from voting), in proper perspective.

The present and future economic situation of Negroes is directly tied to legislation and the elective process. To tax poor Negroes and thereby inhibit their voting is to deny them equal protection of the law.

III.

Originally the poll tax in this country was essentially a liberal departure from the requirement of property ownership as a voting qualification. However, a primary purpose of the Virginia Poll Tax was to disenfranchise the Negro. The record of the Virginia Constitutional Convention of 1902 makes this clear.

The poll tax was chosen as a weapon of disenfranchisement because of the poverty-stricken condition of the Negro people, and that condition persists today. Moreover, the evidence in this case shows that the poll tax requirement is successful in its avowed purpose of preventing Negroes from voting.

The Fifteenth Amendment was adopted in order to secure freedom from discrimination on account of race in matters affecting the franchise. This Court in many cases since that Amendment's adoption has interpreted it as nullifying subtle as well as simple modes of discrimination. Even laws which make no reference to race and which are fair on the face are invalid if, when viewed in the light of existing realities, they are discriminatory. The Virginia Poll Tax laws are of just that sort and result in a denial of the franchise to Negroes on account of race.

IV.

The First Amendment rights of the poor citizens of Virginia are violated by having to pay a tax before qualifying to vote.

This Court has prevented State governments from impairing the right to speak freely, to petition the government and to peaceably assemble, by taxes or otherwise.

These rights may not be denied by unreasonably regulating the affairs of organizations created by citizens to protect their legal and political rights: to speak freely, to petition the courts and other organs of government, and to assemble. These rights are intimately related to the economic and legal welfare of the members of such organizations.

The right of suffrage is a legal and political right which is the same as, and included in, those protected by the First Amendment, and no state may abridge that right by a tax.

In our democratic society the Constitution and this Court guard the free speech of the rich and the powerful and permit them to saturate the thinking of the community. To tax the poor man when he attempts to vote the one opinion he controls denies his exercise of the franchise in a free and unimpaired manner.

ARGUMENT

I.

The Constitutional and Statutory Provisions of Virginia Which Make Payment of the Poll Tax a Prerequisite to Voting in State and Local Elections Violate the Rights of the Poorer Citizens of Virginia to Equal Protection and Due Process of Law Under the Fourteenth Amendment.

A. A State May Prescribe Voting Qualifications Subject to Constitutional Limitations.

Any analysis of the constitutional infirmities of the Virginia Poll Tax must begin with a review of basic principles. Unquestionably the power to prescribe voting qualifications belongs to the states (*Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45; *Pope* v. *Williams*, 193 U.S. 621; *Minor* v. *Happersett*, 21 Wall. 162; 88 U.S. 162).

It is clear, however, that this power is subject to applicable limitations contained in the United States Constitution (*Carrington* v. *Rash*, 380 U.S. 89; *Gomillion* v. *Light-*

foot, 364 U.S. 339; *Lassiter* v. *Northampton, supra*), as is true of every area left to state control such as regulation of criminals (*Griffin* v. *Illinois,* 351 U.S. 12), or even the general police power (*Morgan* v. *Virginia,* 328 U.S. 373).

The wide scope of federal protection given to the right to vote is amply illustrated by the recent apportionment cases (*Baker* v. *Carr,* 369 U.S. 186; *Reynolds* v. *Sims,* 377 U.S. 533; *Gray* v. *Sanders,* 372 U.S. 368). Although these cases dealt with the weight which must be given the ballot of each qualified voter, the philosophy expressed in those cases applies equally to the right to participate at all in the election process. It would be inconsistent to say that all qualified electors must have an equal vote "whatever their income" (*Gray* v. *Sanders, supra*) and yet allow the franchise itself to be conditioned on the ability to afford payment of a tax.

The right to cast a ballot and the weight to be given it are matters equally within the domain of a State and yet both are subject to the limitations of the Fourteenth Amendment. If inequality in granting the franchise is shown with no rational basis therefor, a remedy exists (*Carrington* v. *Rash,* 380 U.S. 89; *Baker* v. *Carr,* 369 U.S. 186).

B. Different Economic Classes Exist in Virginia and the Poll Tax Requirement Inhibits Voting in Lower Income Groups Thus Resulting in Economic Discrimination.

The record in this case clearly demonstrates the existence in Virginia of different economic classes, and the prevalence there of extreme poverty. The following figures con-

tained in Appellant's Exhibit A (R. 51, 55-110) are graphic on this point.[1]

In 1959 there were 2,753,069 persons in Virginia over 14 years of age of which 817,129 had no income and 1,935,940 had income (R. 51, 96). The median income in Virginia in 1959 was $2,354.00 (R. 51, 96). Of those persons receiving income, 544,944 received less than $1,000.00; 864,619 received less than $2,000.00; 1,125,487 received less than $3,000.00 (R. 51, 96). Further, in 1959 38.7 percent of the families and unrelated individuals in Virginia earned under $3,000.00 while only 40.2 percent earned $5,000.00 or more (R. 51, 94).

Furthermore, while less than one percent of the families and unrelated individuals earned over $25,000.00, more than 15 percent earned less than $1,000.00 (R. 51, 94). Without going on *ad infinitum*,[2] it is enough to say that people of greatly varied economic means live in Virginia and that the great majority of these people are in the lower income bracket.

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[1] *1960 Census of Population*, Vol. I: *Characteristics of the Population, Part 48—Virginia* (published by United States Dept. of Commerce, Bureau of the Census).

[2] Appellant's Exhibit E (R. 51, 114-123) reflects the great amounts expended by Government agencies in the State of Virginia for disabled people, the unemployed, welfare recipients, workmen's compensation recipients, etc., and demonstrate the great number of citizens in need of aid from the Government; i.e., in 1962 in Virginia 13,993 persons received old age assistance (R. 121) and 8,500 permanent and totally disabled persons received aid (R. 121). A total of $29,056,000.00 was given in public assistance (R. 122). These figures demonstrate the fact that poverty is not limited to a few poor people unwilling to work but rather is a State-wide problem involving many citizens of every category and employment grouping.

In view of these figures, great significance attaches to Appellant's Exhibit I (R. 51, 142-146) which reflects a governmental agency's designation of the figure of $3,000.00 as the income below which a family is in poverty.[3]

There is also evidence in the record of the inhibiting effect the poll tax requirements superimposed upon the existing economic situation has with regard to exercise of the franchise.

The testimony offered by Appellant shows that the tax has prevented many citizens from voting (R. 47-48). Mr. Brooks of the N.A.A.C.P., experienced in voting registration drives, found that many people stated that they would not register to vote because they could not pay the poll tax. Further, he observed the homes of these people, saw their clothing and personal property and could testify that they were poverty stricken (R. 48).

Professor Louis Ogden, a well known expert on the poll tax (*Harman* v. *Forssenius,* 380 U.S. 528), stated that he was aware of the economic conditions in Virginia and the existence there of different economic groupings. From his studies as a political scientist, from his own investigation, and through the writings of others his opinion was that the Virginia Poll Tax is an impediment to voting and serves to deter people from voting and does inhibit voting (R. 48). The testimony of Appellant herself is to the same effect and it is conceded that she is qualified to vote ex-

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[3] Economic Report of the President transmitted to the Congress January, 1964, together with the annual report of the Council of Economic Advisers, pp. 55-59. This figure appears quite reasonable in view of the other similar figures considered for the same purpose by other groups (Plaintiff's Exhibits C and D (R. 51, 112-113)).

cept for her inability to pay the poll tax (R. 47-48). Virginia voting statistics lend credence to this evidence (R. 124-128).

Moreover, however important the right to vote, one need not cite figures or testimony to show that for most people it is secondary in importance to the mere necessities of sustaining life.[4]

The poll tax like any other tax bears unequally on different people according to economic status. This Court itself recognized that fact in *Breedlove* v. *Suttles* (302 U.S. 277), when it stated:

> "While possible by statutory declaration to levy a poll tax upon every inhabitant of whatever sex, age or condition, collection from all would be impossible for always there are many too poor to pay. Attempt equally, to enforce such a measure would justify condemnation of the tax as harsh and unjust" (*Breedlove* v. *Suttles, supra* at p. 281).

The record establishes, then, the existence in Virginia of different economic classes, the inherent discrimination of the Poll Tax requirement and its tendency to prevent poor people from voting. Such a tax must fall before the standard of due process and equal protection required by the United States Constitution.

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[4] The tax is not as minimal as it would appear at first blush. Payment must be made for three years prior to the year of voting and may run between $9.00-$10.00 including penalties for husband and wife (Constitution of Virginia, Sections 20-21 and 173; Code of Virginia Sections 24-67, 58-49).

C. The Economic Discrimination Resulting From the Virginia Poll Tax Violates the Constitutional Requirement of Equal Protection and Due Process.

Any classification made by State law must be reasonable or rest on some rationable basis (*Truax* v. *Raich*, 239 U.S. 33). This is true even in areas subject completely to State regulation (*Shelton* v. *Tucker*, 364 U.S. 479).

Any classification resulting in economic discrimination must meet this test (*Griffin* v. *Illinois*, 351 U.S. 12; *Douglas* v. *California*, 372 U.S. 353). The poll tax has the same invalid discriminatory effect as that found in the *Griffin* case, where a law authorizing an appeal for all without providing a transcript free to the indigent was equal on its face but ignored economic realities. As the Court there noted:

> "Plainly the ability to pay costs in advance bears no rational relationship to a defendant's guilt or innocence . . ." (*Griffin* v. *Illinois, supra*).

Similarly, one's income has no rational relation to his ability to use the ballot. This Court has recently noted that all participants in an election should have an equal voice "whatever their income" (*Gray* v. *Sanders*, 372 U.S. 368); and has recognized that a person's exercise of the franchise may not be impaired because of "economic status" (*Reynolds* v. *Sims*, 377 U.S. 533). Indeed, it is not necessary to cite authority to show that the richest of men may be incapable of voting wisely while a poor but interested and concerned citizen may intelligently exercise freedom of choice in this country's democratic processes. Any other conclusion would be at war with logic and the evolution of

tradition in this country from the time when property ownership was believed a necessary qualification for voting.

Since the tax cannot be justified as a means of sorting out on the basis of wealth appropriate persons to utilize the ballot, it must be justified on some other ground or fail because of its obvious discrimination. An examination of those grounds used for this purpose reveals their inadequacy.

The tax is in no sense a revenue measure as that term is ordinarily used. The legislative history of levy reveals clearly its intended purpose was to disenfranchise the Negro, not to raise money (*Harman* v. *Forssenius,* 380 U.S. 528). In fact, the provisions relevant to its collection clearly demonstrate this fact. Not only is there no uniform method of assessment and collection provided,[5] but collection by legal process is prohibited for three (3) years (Va. Const. Sec. 22)—in short, until it cannot any longer affect the right to vote; and after that time, no meaningful attempt is made to collect the tax.[6]

The requirement that payment be made six months prior to an election, at a time when interest in the issues is not great, further shows that revenue is not its purpose (Va. Const. Sec. 21; Va. Code, Vol. 5: Sec. 24-17).

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[5] The only assessment is that included in some instances in the notice of assessment for personal property taxes which results in the poll tax being automatically paid by some people. See Ogden, *The Poll Tax in the South,* pp. 65-66.

[6] In fact, an action for mandamus was commenced in the Virginia Supreme Court of Appeals (*Shepheard, et al.* v. *Harrison, et al.*) early in 1965 to compel administration officials of that state to collect back poll taxes.

Further, the Virginia Supreme Court has stated the purpose of the tax as follows:

> "While the Constitution gives to the General Assembly the right to impose a poll tax, it specifically provides against its enforced collection by legal process until three years after it has become due. Its imposition was not intended primarily for the production of revenue, but to limit the right of suffrage to those who took sufficient interest in the affairs of the State to qualify themselves to vote" (*Campbell* v. *Goode,* 172 Va. 463, 466; 2 S.E. 2d 456, 457).

The justification of the tax set forth in *Campbell* v. *Goode, supra,* will not stand examination. Many people pay the poll tax who do not register to vote and many of those who do both do not actually cast a ballot. The disparity is so great as to clearly illustrate the lack of relation between payment of the tax and interest in voting.[7] In any case, Virginia could easily devise a different requirement not involving the payment of money to accomplish the same alleged purpose. No reasonable justification of the tax exists nor could any "remote administrative benefit to the State" serve as such (*Carrington* v. *Rash,* 380 U.S. 89).

Actually, as this Court very recently noted:

> "The Virginia Poll Tax was born of a desire to disenfranchise the Negro" (*Harman* v. *Forssenius,* 380 U.S. 528, 543).

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[7] Defendants estimated that there were 1,052,255 registered voters in Virginia in 1962. (This figure is taken from Appellee's Exhibit 3 attached in their answer to Appellant's interrogatory number two (R. 16). This exhibit while not printed in the records is included herein as Appellant's Exhibit B.) Appellant's Exhibit E (9) (R. 128) shows that only 394,000 people voted for a gubernatorial candidate in 1962.

Thus, with economic discrimination clearly evident from the operation of the poll tax, and with the lack of any rational or reasonable justification therefor, the levy must fall before the requirements of the "equal protection" clause. The strongest reasons of public policy militate towards this conclusion.

The right to vote is preservative of all other rights in a democracy (*Yick Wo* v. *Hopkins*, 118 U.S. 356). The people who are discriminated against by the poll tax are those who are thereby rendered unable to effectively seek to change it. The time no longer exists in this country when the poor represent an open target of discrimination (*Griffin* v. *Illinois*, 351 U.S. 12).

D. The Virginia Poll Tax Laws Violate the Due Process Clause Because of the Unreasonableness of Their Provisions.

Even if the question of economic discrimination were not present, the provisions of the poll tax are so unreasonable that their application alone results in a denial of due process.

The lack of any uniform assessment procedure and the necessity of payment six (6) months in advance of an election, result in the disenfranchisement of many people.[7.1] Requiring a citizen to pay the tax without being reminded to do so, at a time when interest in an election has not been aroused, is completely arbitrary and unreasonable. The prohibition of the enforcement of the tax by legal means for three years only adds to this ridiculous picture.[7.2]

[7.1] Va. Const., Sec. 20-21; Va. Code, Sec. 24-17.

[7.2] Va. Const., Sec. 22.

Naturally those features of the tax bear most harshly upon the poorer people—those without sufficient property to receive a notice of assessment which might result in their automatically paying the poll tax.

Again, these provisions are without rational justification and represent nothing more than "clog on the franchise" (*Ratliff* v. *Beale,* 74 Miss. 247, 20 So. 865). The standard of due process requires more (*Schware* v. *Board of Bar Examiners,* 353 U.S. 232). As this Court has repeated:

> "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government" (*Reynolds* v. *Sims,* 377 U.S. 533, 555).

Furthermore, "onerous procedural requirements which effectively handicap exercise of the franchise" will not be allowed to nullify Constitutional guarantees (*Lane* v. *Wilson,* 307 U.S. 268).

The provisions of the Virginia Poll Tax are just the sort of unjustifiable burden which cannot meet the test of due process.

E. The Question of Economic Discrimination With Regard to the Poll Tax Has Not Been Before the Court Before.

Defendants in this case have relied upon prior Federal Court decisions concerning the poll tax, and the lower court based its decision on precedent. However, Appellant believes that a review of prior decisions reveals that the precise point of economic discrimination argued by Appellant has never been adjudicated before.

In *Breedlove* v. *Suttles,* 302 U.S. 277, the United States Supreme Court ruled that the *Privileges and Immunities Clause* did not prohibit the poll tax because the right of suffrage is conferred by the States, although remaining subject to federal Constitutional limitations. The Court also ruled that the tax violated neither the Nineteenth Amendment nor the Fourteenth Amendment but the attack on the latter provision was based on certain statutory exemptions which were held reasonable; and further, the exemptions upheld were those favoring certain groups by not requiring them to pay the tax.

In *Pirtle* v. *Brown,* 118 F. (2d) 218 (6th Circuit—1941), cert. den. 314 U.S. 621, the central question was again the Privileges and Immunities clause and the Court simply followed the *Breedlove* decision. Further, the Court expressly recognized and found that the poll tax under attack was a revenue measure and that collection as a prerequisite to voting was merely an enforcement device, a state of facts simply not present in this case.

In *Butler* v. *Thompson,* 97 F. Supp. 17 (N. D. Va.—1951), affirmed per curiam 341 U.S. 937, Justice Douglas dissenting, the Court held first that Virginia was not prohibited from imposing a poll tax by the Act of Congress re-admitting her to the Union; second, that the motives of the draftsmen of the poll tax laws did not invalidate them; and finally, that there was no racial discrimination shown. The question of economic discrimination was not presented or adjudicated.

Finally, in the case of *Saunders* v. *Wilkins,* 152 F. 2d 235 (4th Cir. 1945), cert. den. 326 U.S. 870, the attack was again on the Privileges and Immunities clause and was again rejected. The further question presented in that case related to the provisions of the Fourteenth Amend-

ment allowing reduction of representation in relation to people whose right of suffrage was abridged by a state, and the courts refused to decide that point, considering it a political question.

None of the above cases are in point as discrimination as to economic class was not raised or at least, if raised, was not decided. Furthermore, in none of them was there any actual demonstration of discrimination on a racial basis; nor were the First Amendment issues pressed herein presented.

II.

The Constitutional and Statutory Provisions of Virginia Which Make Payment of the Poll Tax a Prerequisite to Voting in State and Local Elections, Because of Their Special Economic Impingement Upon Negroes, Violate the Rights of the Poorer Negro Citizens of Virginia to Equal Protection and Due Process of Law Under the Fourteenth Amendment.

The equal protection and due process requirements of the 14th Amendment do not prohibit a state from establishing standards for voter eligibility bearing a rational relation to intelligent use of the ballot. In *Lassiter* v. *Northampton Election Bd.*, 360 U.S. 45, which upheld this principle no suggestion appears that a state may restrict voting on economic grounds, and while the economic issue was not before the court, one infers the contrary. The practical effect of the poll tax is such that the Court's reasoning in *Griffin* v. *Illinois*, 351 U.S. 12 and *Douglas* v. *California*, 372 U.S. 353, makes clear its prohibition by the 14th Amendment.

The facts are that in Virginia, today, in addition to its effect as economic class discrimination, the poll tax denies due process and equal protection of the law to its Negro citizens on a racial basis due to their historical and present economic status. Even a basic voting qualification such as residence when utilized in conjunction with racial segregation in housing to deny voting rights falls within an area of federal protection (*Gomillion* v. *Lightfoot*, 364 U.S. 339).

A. The Poll Tax in the Light of Economic Actuality.

In 1960 Virginia's total population was about four million (R. 51-55).[8] The number of whites was 3,142,443 (R. 57) and the number of nonwhites was 824,506 (R. 51-58). Whites twenty-one years and over totaled 1,876,167 (R. 51-57), and nonwhites twenty-one years and over totaled 436,720 (R. 51-58). Virginia's voting age is twenty-one years (R. 5, Sec. 24-17 Code of Virginia).

Nonwhite families (Negroes) are concentrated in the lowest economic brackets (R. 51-93, 94):

1959 Annual Income	Whites	Percentage	Nonwhites	Percentage
Under $1,000	52,047	6.6	28,182	17.1
$ 1,000 to $ 1,999	55,570	7.0	30,313	18.4
$ 2,000 to $ 2,999	69,322	8.8	30,695	18.6
$ 3,000 to $ 3,999	81,119	10.3	25,782	15.6
$ 4,000 to $ 4,999	89,297	11.3	18,888	11.5
$ 5,000 to $ 5,999	91,082	11.5	11,744	7.1
$ 6,000 to $ 6,999	77,663	9.8	7,172	4.4
$ 7,000 to $ 7,999	63,441	8.0	4,154	2.5
$ 8,000 to $ 8,999	50,185	6.4	2,780	1.7
$ 9,000 to $ 9,999	36,993	4.7	1,845	1.1
$10,000 to $14,999	87,654	11.1	2,709	1.6
$15,000 to $24,999	26,272	3.3	500	0.3
$25,000 and over	9,217	1.2	94	0.1

[8] Appellant's Exhibit No. A—*1960 Census of Population*, Volume I—*Characteristics of Population, Part 48—Virginia.*

The median income for white families was $5,522 and for nonwhite families was $2,780.00. Half of the nonwhite families have an income of less than $2,780.00 while only 22.4 percent of the white families have an income of less than $2,999.00.

The situation is not improving. On the contrary, it is becoming worse. In the decade from 1949 to 1959 the Negroes, as a group, suffered from relative impoverishment (R. 51-96). The median income for whites fourteen years and over increased $885.00 from $1,880.00 to $2,765.00 while the income for the same age group of nonwhites increased only $328.00 from $919.00 to $1,247.00. There is no basis for optimism that this problem will go away and the trend of serious aggravation is of crisis proportion.

The 1961 Commission on Civil Rights reported (R. 51-111):

> "In Virginia whites comprise 81.1 percent of the population twenty-one years old or over; nonwhites 18.9 percent. Registration figures were obtained from official sources from the thirty-two independent cities and ninety-five of the ninety-eight counties in the State. Among these, whites account for 89.6 percent of the registered voters, and nonwhites for only 10.4 percent."

Appellant urges a two-way cause and effect explanation of low income and little voting: (1) Negroes are poor because they have been excluded from political and civic life and (2) they are excluded from political and civic life because they are poor. The 1964 Annual Report of the President's Council of Economic Advisers (R. 51-143) speaking of our United States said:

> "—One-fifth of our families and nearly one-fifth of our total population are poor.

—Of the poor, 22 percent are nonwhite; and nearly one-half of all nonwhites live in poverty.

—Less than half of the poor are in the south; yet a southerner's chance of being poor is roughly twice that of a person living in the rest of the country" (R. 51-144).

A family's ability to meet its needs depends not only on its money income but also on its income in kind, its savings, its property, and its ability to borrow (*Ibid.*, R. 51-145).

B. Economic Actuality Is Rooted in the Past and Present Laws.

Prior to 1863, slavery of Negroes existed in Virginia (R. 51-42). The 13th Amendment abolished slavery and at the time of its adoption it was directed against Negro slavery.

Only 108 years ago the Chief Justice of this Court expressed the opinion that the descendants of African slaves, whether freed or held in bondage, were not and could not become citizens of the United States and added that it was the general opinion at the time of the Revolution that Negroes had no rights which the white inhabitants of the country were bound to respect. The Negro according to this Court at that time was ineligible to attain United States citizenship either from a State or by virtue of birth in the United States, even as a free man descended from a Negro residing as a free man in one of the States at the date of ratification of the Constitution (*Dred Scott* v. *Sandford,* 19 Howard 393). Slaves could not own property, nor could they inherit it (80 *Corpus Juris Secundum,* p. 1324).

The *Slaughter House Cases* (16 Wall. 68-72) delineate in the history of the 13th, 14th and 15th Amendment the past legal position of the Negro:

> "The institution of African slavery, as it existed in about half the states of the Union . . . culminated in the effort, on the part of most states in which slavery existed, to separate from the Federal Government, and to resist its authority. This constituted the War of the Rebellion, and whatever auxiliary causes may have contributed to bring about this war, undoubtedly the overshadowing and efficient cause was African Slavery.
>
> In that struggle slavery, as a legalized social relation perished. . . . those who had succeeded in re-establishing the authority of the Federal Government . . . determined to place this main and most valuable result in the Constitution of the restored Union as one of its fundamental articles. Hence the 13th article of Amendment of that instrument . . .
>
> The process of restoring to their proper relations with the Federal government and with the other states those which had sided with the Rebellion, . . . developed the fact that, notwithstanding the formal recognition by those states of the abolition of slavery, the condition of the slave race would, without further protection of the Federal government, be almost as bad as it was before. Among the first acts of the legislation adopted by several of the states in the legislative bodies . . . were laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty, and property, to such an extent that their freedom was of little value, . . .

They were in some states forbidden to appear in the town in any other character than menial servants. They were required to reside on and cultivate the soil without the right to purchase or own it. They were excluded from many occupations of gain, and were not permitted to give testimony in the courts in any case where a white man was a party. It was said that their lives were at the mercy of bad men, either because the laws for their protection were insufficient or were not enforced.

These circumstances . . . forced upon the statesman the conviction that something more was necessary in the way of constitutional protection to the unfortunate race who had suffered so much. They accordingly passed through Congress the proposition for the 14th Amendment, . . .

A few years experience satisfied the thoughtful men who had been the authors of the other two Amendments that, notwithstanding the restraint of those articles on the states, and the laws passed under the additional powers granted to Congress, these were inadequate for the protection of life, liberty, and property, without which freedom to the slave was no boon. They were in all those states denied the right of suffrage. The laws were administered by the white man alone. It was urged that a race of men distinctively marked as was the negro, living in the midst of another and dominant race, could never be fully secured in their persons and their property without the right of suffrage.

Hence the 15th Amendment, which declares that 'the right of a citizen of the United States to vote shall not

be denied or abridged by a state on account of race, color, or previous condition of servitude.' The Negro having, by the 14th Amendment, been declared to be a citizen of the United States, is thus made a voter in every state of the Union" (16 Wall. 68-72).

With the adoption of the 14th Amendment in 1868 the Supreme Court was charged with the responsibility of seeing to it that no state denied due process and equal protection of the law to any person. This amendment ensured an end to such opinions concerning fundamental freedoms as this Court had disclosed in the *Dred Scott* case. However, the Negro people in 1965 have not, even yet, overcome their past of slavery and they remain in an economically inferior status, with more than half of their number in poverty. The past century has not been enough time for the Negro family to develop income from its savings and its property and without voting it is unlikely that it will do so.

C. Voting Is the Key to Economic Improvement.

The economic status of people is directly influenced by legislation. The legislation is influenced by voters. For the fiscal year ending June 30, 1962, the Federal Veteran benefits spent by the Federal Government in Virginia were the following: Compensation and pensions, $70,762,000; Insurance and indemnities, $17,823,000; Vocational rehabilitation, $261,000; Education and training, $1,568,000; Loan guaranty, $999,000; Direct loans, $8,884; Hospital and domiciliary facilities, $987,000; Administration and other benefits, $27,432,000 (R. 51-114). Federal Grants to Virginia for the same period were: Public assistance, $22,-

000,000; Employment security administration, $5,000,000; Health Services, $10,000,000; Other welfare services, $18,-000,000; Education, $20,000,000; Highway Construction, $76,000,000; and all others, $8,000,000 (R. 51-115).

The Department of Health, Education and Welfare through its Social Security Administration distributed during the same period to residents of Virginia the following: Old Age benefits, $121,613,000; Supplementary benefits, $19,648,000; Survivor benefits, $54,822,000; Lump sum death benefits, $2,996,000; Disability benefits, $19,190,000; Supplementary disability benefits, $5,413,000 (R. 51-116).

As of June 30, 1962, there were in Virginia 291,474 beneficiaries of Federal old age and survivor insurance benefits with a total monthly payment of $16,584,000 and 32,315 recipients of Federal disability insurance in the total monthly payment of $1,854,000 (R. 51-117).

Federal-State Unemployment benefits in Virginia in 1962 were paid to 60,000 beneficiaries in the total amount of $14,486,000 (R. 51-118). Virginia State unemployment insurance contributions collected the same year were $26,-806,000 (R. 51-119).

Workmen's Compensation benefits paid under Virginia's state laws for 1961 were $13,432,000 (R. 51-120). Aid to dependent children was given with payments to 43,847 recipients including 33,835 children in 1962. Aid to the blind for the same period was $1,154,000 and to the permanently and totally disabled in the amount of $6,590,000 (R. 51-121).

In Virginia in 1962 the average monthly payment to a recipient of public assistance was as follows: Old age assistance, $55.60; Aid to Dependent Children per family, $98.23; ADC per recipient, $23.55; Aid to the blind, $63.05;

to the permanently and totally disabled, $61.90; to those receiving general assistance, $45.10 (R. 51-122). In 1962 the State of Virginia had rehabilitated 3,624 disabled persons and was on June 30, 1962, in the process of rehabilitating 5,229 persons. Its State board of vocational rehabilitation had received $1,421,000 and its State agencies for the blind had received $134,000 of Federal money (R. 51-123).

During this legislative redistribution of income a majority of the people of Virginia did not participate in the electoral process. In 1959, there were 2,312,887 persons in Virginia twenty-one years of age and over (R. 51-55). The total popular vote cast for presidential electors in 1960 was 771,000 (R. 51-125). Thus 1,541,887 persons who met the age requirement did not participate in the election for president in 1960. In 1962, 394,000 persons voted in the election for Governor (R. 51-128) of which 63.8 percent or about 233,372 voted for one of the defendants in this action, Albertis S. Harrison, Jr. Governor Harrison won his office in an election in which about 1,918,887 Virginians over the age of twenty-one years did not vote. He was made Governor by only 1/10th of the persons who met the age requirement for voting.

> "Today, an estimated 20 to 25 million adults—who are potential voters—fall within the definition accepted by the White House as those living in 'poverty'. The promise by Government of better things to come tends to have strong appeal for this large group of voters." (*U.S. News and World Report,* Jan. 20, 1964, p. 36, Appellant's Exhibit C.) (R. 51-112)

D. The Poll Tax Contributes Effectively to Keep Negroes From Voting.

The expert testimony of Professor Frederick D. Ogden, Mr. John Brooks, and the Appellant Mrs. Butts was received in the form of a statement by counsel by stipulation (R. 48). Professor Ogden opined as an expert political scientist that the imposition of the poll tax inhibits and deters persons of the lower economic classes from voting and, that since there are proportionately twice as many poverty-stricken people among the Negro group as there are among the white group, the economic impact and impingement upon the Negro people is greater because of their economic status (R. 48).

The testimony of Mr. John Brooks, a salaried employee of the N.A.A.C.P., engaged solely in voter registration and get-out-to-vote campaigns was that among those persons he solicited to register to vote the widespread reason given for their refusal to register was their poverty; that they could not pay their poll tax (R. 48).

The Appellant is representative of an identifiable group of poor Negroes. She is a Negro woman; she has no income of her own and is supported solely by her disabled husband who receives a Veteran's pension as his sole income.

The Court is urged to note that there is little or no economic activity which is not subject to legislation and the franchise. The Negro poor find themselves in this vicious circle. One way to assist them is to insist that voting qualifications established by states conform to the Constitutional requirement that the poor may not be denied equal protection of the law (*Griffin* v. *Illinois*, 351 U.S. 12),

and must receive due process of the law and that a tax which may appear equal on its face is unequal in its application because of the facts of history and of life.

III.

The Virginia Laws Which Make Payment of the Poll Tax a Prerequisite to Voting in State and Local Elections Abridge the Right to Vote of the Negro Citizens of Virginia on Account of Race, Color and Previous Condition of Servitude in Violation of the Fifteenth Amendment.

A. The Purpose of the Virginia Poll Tax Law Was to Disenfranchise Negroes.

The Virginia Poll Tax was "born of a desire to disenfranchise the Negro" (*Harman* v. *Forssenius*, 380 U.S. 528). The accuracy of this statement becomes devastatingly apparent through even a cursory examination of its legislative history. In order to view the Virginia laws in proper perspective, it is helpful to review the history of the poll tax in this country.

The first use of the poll tax as a suffrage requirement dates back almost to the beginning of the history of the United States. Surprisingly enough, this form of levy, when first used, was essentially a liberal departure from the property qualifications which were often necessary for voting. Most states abolished this sort of tax as time passed and few states retained one by the time of the Civil War.

The phenomena of the poll tax reappeared in force on the American scene following the Civil War and Reconstruction. The levy was reinstituted primarily as an instru-

ment to disenfranchise and control the many recently freed slaves. In fact, it was just one of many measures enacted to control the right of suffrage.[9]

The Virginia Poll Tax was adopted at a Constitutional Convention held in 1902, and fits into this historical pattern. The following comments by speakers at that Convention bear witness to the real purpose of the tax[10] (Appellant's Exhibit F) (R. 51, 129-139).

> "Now I repeat, our people have no prejudice, no animosity, against the members of the colored race, but they believe, and I believe with them that the dominant party in Congress not only committed a stupendous blunder, but a crime against civilization and Christianity, when, against the advice of their wisest leaders, they required the people of Virginia and the South, under the rule of bayonet, to submit to universal negro suffrage. (Applause)
>
> The negro had just emerged from a state of slavery, he had no education, he had no experience in the duties of citizenship. He had no qualification for participation in the functions of government. The all powerful Creator, for some wise purpose, had made him inferior to the white man, and ever since the dawn of history, as the pictured monuments of Egypt attest, he had occupied a position of inferiority" (R. 51, 129).
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[9] See generally, Ogden, *The Poll Tax in the South* (1958), pp. 1-4.

[10] *Report of the Proceedings and Debates of the Constitutional Convention of the State of Virginia,* held in the City of Richmond, June 26, 1902, The Hermitage Press, Inc.

"Under these circumstances, I repeat, that to install universal negro suffrage was a grievous wrong, not only to the white race, but to the colored race also. It would have been better for the colored, as well as the white people, that intelligence should have been allowed to rule" (R. 51, 129).

* * * * *

"What, then, was the origin of the movement in Virginia for constitutional revision? Whence did it spring? What element in the Commonwealth to-day stands responsible for it and charged with its consummation? It had its origin in the consciousness of the people of Virginia that negro enfranchisement was a crime to begin with and a wretched failure to the end, and that the unlawful, but necessary, expedients employed to preserve us from the evil effects of the thing were debauching the morals and warping the intellect of our own race. (Applause) The demand for reformation came from the white people of Virginia. It came from those white people who constitute the dominant political party in Virginia" (R. 51, 130).

* * * * *

"Now, then, to the facts of the case: In response to the demands of the white people of Virginia, a Democratic Legislature proposed to the people the calling of a Constitutional Convention to revise and amend the present Constitution. The primary purpose of that Convention was to abridge the right of popular suffrage and to eliminate every negro of whom we could be rid without running counter to the prohibition of the Federal Constitution. Not a white man in Virginia, nor a black man of ordinary intelligence, will contend

that this purpose of constitutional revision was disguised or attempted to be concealed" (R. 51, 130).

* * * * *

"Now, Mr. Chairman, inasmuch as we stand here face to face with the fifteenth amendment to the Constitution of the United States, when what we want to do is to write the one word 'white', in the Constitution, and when we are prevented from doing that by this Constitution of the United States, it must be realized by every one that what we do in this direction must be at least an expedient; it cannot reach the dignity of the ideal; it must be simply the best thing that we can do under adverse conditions" (R. 51, 136).

* * * * *

"I would not expect for the white man a rigid examination. The people of Virginia do not stand impartially between the suffrage of the white man and the suffrage of the black man. If they did, this Convention would not be assembled upon this floor. If they did, the uppermost thoughts in the hearts of every man within the sound of my voice would not be to find a way of disfranchising the black man and enfranchising the white man. We do not come here prompted by an impartial purpose in reference to negro suffrage. We come here to sweep the field of expedients for the purpose of finding some constitutional method of ridding ourselves of it forever; and we have the approval of the Supreme Court of the United States in making that effort" (R. 51, 138-139).

These various comments and others to be found in the Virginia Constitutional Debates of 1902 clearly indicate

that the exclusion of the Negro as a qualified voter was one of the primary purposes of the Convention itself as well as the main reason for the adoption of the poll tax. It is helpful and proper to review the legislative history of an act in determining its constitutionality (*Davis* v. *Schnell*, 81 F. Supp. 872, aff'd, 336 U.S. 933; *United States* v. *Mississippi*, 380 U.S. 128).

B. Poverty Exists Among the Virginia Negroes and Their Economic Position Is Significantly Worse Than That of the White Citizens.

It is not surprising that an economic weapon was chosen by the makers of the Constitution as one method of disenfranchisement. While there were many poor people of both races in Virginia, the situation of the Negro was relatively much worse than that of the white man, because of his previous condition of servitude. Historically, his economic status has been slow to improve. This fact is borne out by the statistics contained in the Federal census and other sources which show proportionately far more poor Negroes than whites.[11] Moreover, the evidence in the record shows that the poll tax does keep poor Negroes from voting.[12]

The following chart shows a comparison of the number of whites and nonwhites registered to vote (Appendix B) and the number of each group over twenty-one in certain counties and independent cities in Virginia (Appellant's Exhibit A, R. 51, 60-92).

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[11] The facts and figures appear in the discussion of the preceding question of this brief and will not be repeated here.

[12] *1960 Census of Population*, Vol. I: *Characteristics of the Population, Part 48—Virginia* (published by United States Department of Commerce, Bureau of the Census).

County or Independent City	White		Non-White	
	No. over 21 1960	No. Registered 1962	No. over 21 1960	No. Registered 1962
Arlington	102,364	48,806	5,214	1,307
Charlotte	5,014	4,241	2,494	524
Culpeper	6,964	4,582	2,068	488
Cumberland	1,819	1,540	1,647	300
Dickenson	9,791	7,528	64	None
Fairfax	140,605	59,772	9,110	1,036
Halifax	11,377	5,270	6,769	850
Henry	17,805	6,545	4,113	401
Mecklenburg	10,474	5,700	6,624	408
Pittsylvania	22,835	8,084	8,604	640
Roanoke	35,014	20,093	2,211	592
Southampton	7,239	4,036	7,435	677
Westmoreland	3,836	3,633	2,352	407
Martinsville (Indep. City)	8,084	3,289	2,972	406
Norfolk (Indep. City)	129,423	68,828	45,376	11,945

These figures make clear that proportionally far fewer Negroes than whites register to vote, and while it is true that the historical socio-economic condition of the Negro contributes to this situation, in view of the evidence presented by Appellant, there can be no question but that the Virginia poll tax requirement is a direct and substantial contributing factor. The fact that greater numbers of Negroes do not register bears testimony to the success of the work of the drafters of the Virginia Constitution.

Having established then, that a primary purpose of the poll tax was to disenfranchise the Negro simply because he was a Negro, and having illustrated that the tax, in fact, does disenfranchise many Negro people because of their poverty, the only remaining question is whether such denial and abridgment of the right to vote is permissible under the Fifteenth Amendment.

C. The Fifteenth Amendment Forbids All Devices Which Unjustifiably Discriminate Against the Negroes' Exercise of the Franchise.

The purpose of the Fifteenth Amendment was to secure freedom from discrimination on account of race in matters affecting the franchise; and this Constitutional protection extends to subtle schemes of abridgment as well as obvious ones. (*Lane* v. *Wilson,* 307 U.S. 268; *Gomillion* v. *Lightfoot,* 364 U.S. 339).

Throughout the period since the Amendment's adoption, it has been utilized by this Court to strike down attempted interference with the Negroes right to vote (*Guinn* v. *United States,* 238 U.S. 347; *Lane* v. *Wilson,* 307 U.S. 268; *Smith* v. *Allwright,* 321 U.S. 649; *Gomillion* v. *Lightfoot,* 364 U.S. 339; *United States* v. *Mississippi,* 380 U.S. 128).

In *Ex Parte Yarbrough,* 110 U.S. 651, 664, a case involving attempted infringement of a citizen's right to vote, the Court stated:

> "The 15th Amendment of the Constitution, by its limitation on the power of the States in the exercise of their right to prescribe the qualifications of voters in their own elections, and by its limitation of the power of the United States over that subject, clearly shows that the right of suffrage was considered to be of supreme importance to the National Government, and was not intended to be left within the exclusive control of the States."

The Court also noted the language quoted as follows from *United States* v. *Reese, et al.,* 92 U.S. 214, 218 with reference to the Fifteenth Amendment:

> "It has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is an exemption from discrimination in the exercise of the elective franchise on account of race, color or previous condition of servitude." (*Ex Parte Yarbrough*, Supra, 665.)

The importance of the Fifteenth Amendment has not been ignored when this Court has scrutinized various schemes aiming at disenfranchisement of the Negro, such as the "Grandfather clause" (*Guinn* v. *United States*, 238 U.S. 347), the "white primary" (*Smith* v. *Allwright*, 321 U.S. 649), gerrymandering of voting districts (*Gomillion* v. *Lightfoot*, 364 U.S. 339) or the giving of unlimited discretion in administering literacy tests (*Davis* v. *Echnell*, 81 F. Supp. 872, Aff'd, 336 U.S. 933).

As this Court has so clearly stated:

> "The Amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race, (*Lane* v. *Wilson*, 307 U.S. 268, 275)."

In no case does a more apt example exist than in *Gomillion* v. *Lightfoot*, 364 U.S. 339. In the *Gomillion* case the City of Tuskegee, Alabama, so juggled its boundaries as to exclude most Negroes. Although the redistricting measure was non-discriminatory on its face, this Court recognized the scheme for what it was, noting that constitutional guarantees may not be "manipulated out of existence."

The *Gomillion* case reiterated the important principle that:

"'Acts generally lawful may become unlawful when done to accomplish an unlawful end (Cit. omit.), and a constitutional power cannot be used by way of condition to attain an unconstitutional result.'" (*Gomillion* v. *Lightfoot,* Supra 347, 348.)

Gomillion makes clear that even such a basic and legitimate voting qualification as residence may be perverted so as to violate the Constitution. The fact that a particular qualification appears on its face to apply equally to all races will not save it from invalidity if the realities of the situation indicate an abridgment of the right to vote on account of race.

This Court has always looked through the facade of an artfully drawn statute which on its face applies to white and Negro equally but which, in fact, is unconstitutionally discriminatory. (*Griffin* v. *School Board of Prince Edward County, et al.,* 377 U.S. 218; *U. S.* v. *Mississippi,* 380 U.S. 128.)

It is settled that a State may not say that all of those people who are not white cannot vote and that even the most basic voting qualification perverted so as to intentionally exclude Negroes is invalid (*Gomillion* v. *Lightfoot,* supra). It should be equally clear that a voting qualification intentionally drawn along economic lines to exclude Negroes because of their poverty which is without other reasonable justification, and which, in fact, has the intended effect, should be invalid. Poverty may not be used as a means of denying equal protection of the Fourteenth Amendment (*Griffin* v. *Illinois,* 351 U.S. 12) and it should not be able to be used as a means of abridging or denying the Franchise, as forbidden by the Fifteenth Amendment.

IV.

The Constitutional and Statutory Provisions of Virginia Which Make Payment of the Poll Tax a Prerequisite to Voting in State and Local Elections Violate the Rights of the Poorer Citizens of Virginia Guaranteed by the First Amendment to the Federal Constitution.

Requiring the payment of a tax to exercise the right to vote in a State or municipal election is a violation of the First Amendment to the Federal Constitution.

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

A. To Speak, to Petition and to Assemble May Not Be Impaired by Taxes or Otherwise.

As in *Fiske* v. *Kansas,* 274 U.S. 380 this Court has repeatedly invalidated State laws on the grounds they abridged freedom of speech contrary to the due process clause of the Fourteenth Amendment and a governmental purpose to control an activity subject to State regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade areas of protected freedoms (*NAACP* v. *Alabama,* 377 U.S. 288).

This Court has held that the Constitution insures the:

> ". . . maintenance of the opportunity for free political discussion to the end that changes may be obtained by lawful means . . ." (*Stromberg* v. *California,* 283 U.S. 359, 369.)

And where the clear and present danger test has been invoked to restrict utterances it has been justified only because of a threat of destruction of the State or a serious threat of "political, economic or moral" injury to it. *Whitney* v. *California,* 274 U.S. 357.

This Court, citing the fact that the American Revolution "really began when . . . that Government (of England) sent stamps for newspaper duties to the American colonies" has been alert to the possible uses of taxation as a method of suppressing objectionable publications (*Grosjean* v. *American Press Co.,* 297 U.S. 233, 246). While persons engaged in the dissemination of ideas are subject to ordinary taxes in like manner as other persons, a flat license fee levied and collected as a pre-condition to the sale of religious books and pamphlets has been set aside. *Murdock* v. *Pennsylvania,* 319 U.S. 105; *Jones* v. *Opelika,* 319 U.S. 103; *Follett* v. *McCormick,* 321 U.S. 573.

The right of persons to freely associate is also protected. In the absence of a compelling, subordinating interest, supplying a relevant correlation between a city's taxing power and compulsory disclosure of membership lists with all the adverse consequences to the members, a municipal occupational license tax ordinance requiring disclosure of members, officers, and contributors cannot be enforced against local chapters of the N.A.A.C.P. *Bates* v. *Little Rock,* 361 U.S. 516. The First and Fourteenth Amendments have protected the right of railroad brotherhood members to make available legal services to protect the economic interest of each other. *Brotherhood of Railroad Trainmen* v. *Virginia* (377 U.S. 1). A State could not, by invoking the power to regulate the professional conduct of attorneys,

infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest.

From early beginnings in the Magna Carta through the successful efforts of the English Commons the right to petition was finally secured every commoner in England. Today in these United States the right of peaceable assembly is:

> "cognate to those of free speech and free press and is equally fundamental . . . (it) is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions,—principles which the Fourteenth Amendment embodies in the general terms of its due process clause. . . . The holding of meetings for peaceable political action cannot be prescribed . . ." (*DeJonge* v. *Oregon,* 299 U.S. 353.)

The right of petition comprehends demands for an exercise by the Government of its powers in furtherance of the interest and prosperity of the petitioners and of their views on politically contentious matters. This right emerged to prominence in the abolition movement prompting the House of Representatives in the 1830's to adopt a standing rule on January 28, 1840:

> "That no petition, memorial, resolution, or other paper praying the abolition of slavery in the District of Columbia, or any State or Territories of the United States in which it now exists, shall be received by the House, or entertained in any way whatever."

The rule was repealed in 1845.

The Norfolk, Virginia, City Charter (Sec. 30-48) requires one signing a petition to initiate legislation be a registered voter with the result under State law that the payment of the poll tax is a pre-condition to one method of petitioning the City government.

B. Voting Is a Fundamental Exercise of First Amendment Rights.

In 1946 Congress passed the Federal Regulation of Lobbying Act (2 U.S.C. 261-270) under which more than 2,000 lobbyists have registered and about 500 organizations report lobbying contributions and expenditures. In *United States* v. *Rumely,* 345 U.S. 41, this Court construed the scope of the authority which the House of Representatives gave to the Select Committee on Lobbying Activities, so as to apply to "lobbying in its commonly accepted sense—to direct communications with members of Congress on pending or proposed federal legislation" but not to apply to indirect lobbying by "attempts to saturate the thinking of the community". The Court by this construction avoided the conflict between the Committee's scope and the Constitution which protects the rights of the rich to mold public opinion. Surely the same Constitution prohibits taxing the unconvinced poor, descendants of former slaves, when they vote the one opinion they control.

This Court in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.* (365 U.S. 127), held that a publicity campaign by the railroads designed to benefit them at the truckers expense by influencing favorable legislation could not be a violation of the Sherman Act for "the right of petition is one of the freedoms protected by the

Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms."

The equating of free speech, right to petition and voting appears as in *Reynolds* v. *Sims* (377 U.S. 533, 560), where this Court held that the Equal Protection Clause requires that seats in both houses of a bicameral state legislature must be apportioned substantially on a population basis and cited with approval the statement from *Wesberry* v. *Sanders* (376 U.S. 1):

> " 'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right,' "

and added (pp. 561, 562):

> ". . . Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."

Just as this Court has protected those who influence the voter by free speech so does it protect those without influence who speak by their votes. To permit a State to require the payment of any tax to exercise the right of voting is likewise prohibited under the First and Fourteenth Amendments.

Conclusion

The fundamental right to vote, although subject to State regulation, may not be impaired by a state through a law requiring the payment of a poll tax which, when examined in the light of historical and present facts constitutes a denial of the First, Fourteenth and Fifteenth Amendment rights of Appellant and the class she represents.

Appellant asks that the lower court's decision be reversed and a judgment entered declaring null and void those provisions of the Virginia Constitution and Statutes which make payment of the poll tax a prerequisite to voting; and that the case remanded for a permanent injunction restraining their enforcement.

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